

SHELLEY ANNE TRAINOR

IBLA 75-558

Decided August 14, 1975

Appeal from decision of the Fairbanks District Office, Bureau of Land Management, rejecting Alaska Native allotment application F-14449.

Dismissed.

1. Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Timely Filing

An appeal to the Board of Land Appeals will be dismissed where the appellant failed to file a timely notice of appeal. A notice of appeal, although received within the 10-day grace period, but not transmitted within the 30-day period following service of the decision, is not timely filed and must be dismissed.

APPEARANCES: William B. Schendel, Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Shelley Anne Trainor has appealed from a decision of the Fairbanks District Office, Bureau of Land Management, dated January 24, 1975, rejecting her Alaska Native allotment application filed pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. § 270-1 through § 270-3 (1970).

The record contains a return receipt for the letter containing the decision sent to appellant. The receipt was postmarked and signed for delivery on February 1, 1975. The notice of appeal was dated March 11, 1975, transmitted to the District Office by envelope postmarked on March 11, 1975, and received on March 13, 1975.

[1] The time limit for filing a notice of appeal is set forth in 43 CFR 4.411(a), which states in pertinent part that:

The notice of appeal * * * must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing.

Thus, appellant's notice of appeal should have been filed with the District Office at least by March 3, 1975. Failure to timely file a notice of appeal subjects the appeal to summary dismissal unless the notice "was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed." 43 CFR 4.401(a). Although appellant's notice was received on March 13, 1975, the last day of the 10-day grace period, the notice of appeal is nevertheless unacceptable because it was not transmitted within the 30-day period following service of the decision. Elbert F. Howey, 15 IBLA 208 (1974); Margaret Chicharello, 9 IBLA 124 (1973). Such a failure to file timely under the circumstances is jurisdictional and mandates summary dismissal. 43 CFR 4.411(b); Elbert F. Howey, *supra*; Estate of Knudsen, 10 IBLA 329 (1973).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

